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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN JOSE DIVISION**
18

19 FRANCESCO CORALLO

20 Plaintiff,

21 v.

22 NSO GROUP TECHNOLOGIES LIMITED,
23 Q CYBER TECHNOLOGIES LIMITED, and
24 APPLE INC.

25 Defendants.

Case No. 3:22-cv-05229-RS

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF DEFENDANT
APPLE INC.'S MOTION TO
DISMISS COMPLAINT**

DATE: December 15, 2022

TIME: 1:30 pm

DEPT.: Courtroom 3 - 17th Floor

JUDGE: Hon. Richard Seeborg

1 **I. INTRODUCTION**

2 Pursuant to Federal Rule of Evidence 201, Defendant Apple Inc. (“Apple”) respectfully
3 requests that the Court take judicial notice of the following documents, which are attached to the
4 concurrently-filed Declaration of Joshua A. Vittor (“Vittor Decl.”):

- 5 • **Vittor Decl., Exhibit B:** A true and correct copy of Apple’s Apple Media Services Terms
6 and Conditions (last revised May 13, 2019). This document is publicly available at
7 [https://web.archive.org/web/20190514051751mp_/https://www.apple.com/legal/internet-](https://web.archive.org/web/20190514051751mp_/https://www.apple.com/legal/internet-services/itunes/us/terms.html)
8 [services/itunes/us/terms.html](https://web.archive.org/web/20190514051751mp_/https://www.apple.com/legal/internet-services/itunes/us/terms.html).
- 9 • **Vittor Decl., Exhibit C:** A true and correct copy of Apple’s iCloud Terms and Conditions
10 (last revised September 13, 2019). This document is publicly available at
11 [https://web.archive.org/web/20191011155610mp_/https://www.apple.com/legal/internet-](https://web.archive.org/web/20191011155610mp_/https://www.apple.com/legal/internet-services/icloud/en/terms.html)
12 [services/icloud/en/terms.html](https://web.archive.org/web/20191011155610mp_/https://www.apple.com/legal/internet-services/icloud/en/terms.html).

13 **II. ARGUMENT**

14 Federal Rule of Evidence 201 provides that a court may take judicial notice of a fact “not
15 subject to reasonable dispute [and] ... capable of accurate and ready determination by resort to
16 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). A court may take
17 judicial notice “at any stage of the proceeding,” including in ruling on a motion to dismiss. Fed. R.
18 Evid. 201(f); *see Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (stating that
19 when ruling on a motion to dismiss a court must consider the complaint in its entirety, including
20 documents incorporated into the complaint by reference and matters of which a court may take
21 judicial notice). The Court may take judicial notice of matters that are either (1) generally known
22 within the trial court’s territorial jurisdiction, (2) capable of accurate and ready determination by
23 resort to sources whose accuracy cannot reasonably be questioned, or (3) not subject to reasonable
24 dispute. Fed. R. Evid. 201(b). Proper subjects of judicial notice on a motion to dismiss include
25 “matters of public record” and publicly accessible websites. *Khoja v. Orexigen Therapeutics, Inc.*,
26 899 F.3d 988, 998 (9th Cir. 2018); *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998-999 (9th
27 Cir. 2010).

Here, the Court may take judicial notice of Exhibits B and C. Exhibits B and C are webpages from Apple’s website that describe Apple’s terms of service. The information contained in Exhibits B and C are not subject to reasonable dispute and can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned. *See* Fed R. Evid. 201(b). Exhibits B and C were publicly available on Apple’s website and are currently publicly available through the Wayback Machine. Courts routinely find that publicly available websites, including those available through the Wayback Machine, are the proper subject of a request for judicial notice where, as here, there is no reasonable dispute regarding the information. *See Diep v. Apple, Inc.*, No. 21-CV-10063-PJH, 2022 WL 4021776, at *2 (N.D. Cal. Sept. 2, 2022) (taking judicial notice of Apple’s terms of service); *Calhoun v. Google LLC*, 526 F. Supp. 3d 605, 617 (N.D. Cal. 2021) (taking judicial notice of Google’s terms of service); *In re Google Assistant Privacy Litig.*, 457 F. Supp. 3d 797, 813–14 (N.D. Cal. 2020) (same); *Erickson v. Nebraska Mach. Co.*, 2015 WL 4089849, at *1 n.1 (N.D. Cal. July 6, 2015) (“Courts have taken judicial notice of the contents of web pages available through the Wayback Machine as facts that can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”).

III. CONCLUSION

The Court should take judicial notice of Exhibits B and C for the reasons stated above.

Dated: November 4, 2022

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By: /s/ Sonal N. Mehta
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